

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARLA A WIGGINS
Claimant

APPEAL NO. 17R-UI-09703-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE STORES COMPANY INC
Employer

OC: 07/16/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Marla Wiggins (claimant) appealed a representative's August 8, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Advance Stores Company (employer). This administrative law judge issued a decision on August 31, 2017, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on September 21, 2017. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 9, 2017. The claimant participated personally and through Shawn Schuman, former general manager. The employer participated by Jamy Abbott District Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 1, 2015, as a full-time driver. The employer has a Team Member Handbook that is available on line. In October 2016, the claimant was hired as a full-time parts professional. During her employment she had six store managers and three district managers. The last store manager and district manager had no automotive experience. The claimant was working fifty to sixty hours per week and trying to educate them so she would not have to work so many hours. She never complained about the hours and would come in on her day off if she was needed.

The new managers ignored her attempts to help, even though the employer had an open door policy. Often the claimant was the only key holder scheduled. She had to leave and make deliveries. The policy states that a key holder must always be on the premises. The managers did not seem to understand they were violating the employer's policy. The manager told drivers not to make stops while on deliveries. One delivery driver, Grant, took thirty minutes longer to make deliveries to the same customer as the claimant. The claimant was Grant's supervisor when the store manager was away and knew Grant was making unauthorized stops. The

claimant commented on store policies and the employee to the store manager. On July 12, 2017, the store manager issued the claimant a written warning regarding her negativity.

On July 13, 2017, the claimant clocked out and talked to the store manager out of earshot of the one customer in the store. She said, "Your golden boy, Grant, did an illegal stop today and you did nothing about it. I think this is ridiculous, just unacceptable". On Monday, July 17, 2017, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Off premises during lunch hour, claimant assaulted co-worker for alleged rumors spread by co-worker. Court of Appeals allowed benefits, noting lack of evidence of negative impact at work place plus fact that claimant finished the day before being discharged. *Diggs v. Employment Appeal Board*, 478 N.W.2d

432 (Iowa App. 1991). The final incident occurred while the claimant was not working. The employer could not point to any negative impact to the business. The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 8, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs